

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s):	Donohoe, Brendan M.; et. al.		
Assignee:	Cardica, Inc.		
Title:	Integrated Anastomosis Tool with Graft Vessel Attachment Device and Cutting Device		
Serial No.:	10/789,558		
Examiner:	Diane D. Yabut	Filed:	February 27, 2004
Docket No.:	151	Group Art Unit:	3734

APPLICANT-INITIATED INTERVIEW REQUEST

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

In compliance with MPEP 713.01, this request is submitted to the Examiner in advance of the interview, and in a form equivalent to Form PTOL-413A.

The proposed date and time of the interview is March 26th, at a time to be determined. The type of interview requested is personal. Tentative participants are Brian Schar, attorney for Cardica, Inc., and Examiner Diane D. Yabut. Supervising Primary Examiner of Art Unit 3734, Michael J. Hayes, is also a tentative participant, at the discretion of Examiner Yabut. An exhibit may be shown: a demonstration model of Cardica's PAS-Port® proximal anastomosis tool.

The issues to be discussed include:

(1) Patentability of claim 12 under 35 USC 112. The specification supports the claimed "single control operationally connected to both the cutting device and the graft vessel attachment device." The present application expressly incorporates WO 00/69343 by reference in its entirety. (US2004/0167550, paragraph 0063.) That reference claims priority to U.S. Patent Application Serial No. 09/314,278, now U.S. Patent No. 6,428,550. That patent describes an anastomosis tool having a trigger 172 movable to actuate a trocar 152 and a holder tube 154. (*e.g.*, col. 9, lines 32-38). Thus, the specification includes adequate support for the claimed subject matter.

(2) Patentability of claims 1, 9 and 12-14 over U.S. Pat. No. 6,605,098 to Nobis et. al. ("Nobis") because Nobis does not teach or suggest each and every element of the claims. With regard to claim 1, that claim requires a "chamber [that] substantially maintains hemostasis," and further requires that "the cutting device is movable to a position within the chamber after forming

the opening in the target vessel.” The Office Action considers the compartment within which the punch assembly 600 is placed to be analogous to the claimed chamber. (Office Action, paragraph 8, page 8). Even if such a compartment is a chamber, which is not admitted, the punch assembly is not “movable to a position within the chamber after forming the opening in the target vessel,” as claimed. Instead, the punch assembly 600 is moved out of the compartment, and then replaced by the cartridge 200. (Nobis; Figure 13). Further, the compartment of Nobis is open to the outside, such that it does not and cannot substantially maintain hemostasis, as required by claim 1. Figure 13 of Nobis shows that the punch assembly 600 is moved out of the compartment through a hole that is not closed and that is open to a slot 619 that in turn is an open channel. (Nobis; Figure 13). Thus, the compartment cannot substantially maintain hemostasis, because it is open, and thus does not and cannot teach the claimed chamber that “substantially maintains hemostasis.” It is pointed out that the “single control” claimed in claim 12 cannot be anticipated by a human being, as suggested by the Office Action, because a surgeon is not patentable subject matter and thus cannot anticipate a claimed mechanical element that is patentable subject matter. (See MPEP 2105).

(3) Patentability of claim 3 over U.S. Patent Application 20020173808 of Houser (“Houser”), because Houser does not teach or suggest each and every element of the claim. Specifically, Houser does not teach or suggest the claimed “cutting device movable away from the axial centerline of the lumen.” Houser instead discloses moving a cutting device 204 only linearly along its axis. (Houser; *e.g.*, paragraph 204; Figures 21a-21c).

(4) Potential amendments in order to facilitate allowance also may be discussed.

Assignee’s attorney thanks the Examiner for her time and courtesy. Please contact the undersigned if there are any questions.

Respectfully submitted,

/Brian A. Schar, Esq./

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